

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1917 of 1991

with

SPECIAL CIVIL APPLICATION No 4910 of 1995

SPECIAL CIVIL APPLICATION No 4188 of 1995

with

LETTERS PATENT APPEAL No 503 of 1996

with

CIVIL APPLICATION No 1404 and 4539 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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VADODARA MUNICIPAL CORPORATIONKAMDAR KARMCHARI UNION

Versus

VADODARA MUNICIPAL CORPORATION

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Appearance:

MR MC BHATT, Sr. Advocate with MR RD RAVAL for  
Petitioners in Spl.C.A. Nos. 1917/91, 4910/95 &  
4188/95

MR NK MAJMUDAR for appellant in LPA No.503/98

MR PRANAV G DESAI for Respondent Nos. 1 and 2

MR RC KODEKAR, AGP for Respondent No. 3 and 4

MR TS NANAVALI for Respondent No. 5

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI  
and  
MR.JUSTICE M.S.SHAH

Date of decision: 20/12/2000

COMMON CAV JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

All these proceedings are filed by or on behalf of the employees of Vadodara Municipal Corporation or Jamnagar Municipal Corporation who claim that they are entitled to be appointed as Food Inspectors or to be continued as Food Inspectors as notified under the Prevention of Food Adulteration Act, 1954 and that they are entitled to be permitted to function as Food Inspectors under the said Act.

2. Special Civil Application No. 1917 of 1991 is filed by Vadodara Municipal Corporation Kamdar Karmachari Union for the benefit of three of its members being Ramesh G Bendbar, Gangadhar Y Ramekar and Suresh H Rajput. The facts averred in the said petition are as under :-

2.1 The aforesaid three employees were already employees of the Vadodara Municipal Corporation when they were selected for training and appointment as Food Inspectors. They underwent training conducted by the Directorate of Drugs Control Administration, Gujarat State from 2.9.1979 to 30.10.1979 and were granted certification of eligibility as Food Inspectors on 12.11.1979 by Food (Health) Authority of Gujarat. In the Government of Gujarat Gazette dated 19.2.1981, the State Government declared them appointed as Food Inspectors for Vadodara. It is the case of the petitioners that in view of the above gazette, the Vadodara Municipal Corporation appointed Suresh H Rajput and Ramesh G Bendbar as Food Inspectors by order dated 15.10.1981 (Annexure "A" to the petition). Gangadhar Y Ramekar was similarly appointed as a Food Inspector in the year 1982. According to the petitioners, the said three employees discharged their duties as Food Inspectors. They had taken samples of various food products and launched prosecution against the culprits before the Courts for necessary trials.

2.2 On 4.4.1988, the said employees were transferred as Sanitary Inspectors vide order at Annexure "B" to the

petition. By order dated 24.11.1988, the respondent Corporation upgraded 7 posts with designation of Senior Food Inspectors. Senior Sanitary Inspectors were given charge of the said posts. The petitioner Union protested against the aforesaid transfer of three Food Inspectors as Sanitary Inspectors and also the above arrangement of giving charge of Senior Food Inspectors to Senior Sanitary Inspectors. The petitioner Union apprehended that the aforesaid three employees were transferred from the posts of Food Inspectors to the posts of Sanitary Inspectors on account of an impression harboured by the respondent Corporation that the said three employees were not eligible or qualified for the posts of Food Inspector under the provisions of Rule 8 of the Prevention of Food Adulteration (Amendment) Rules, 1980. The petitioner Union contends that since the three employees possess the qualification of SSC, and were Sanitary Inspectors on the relevant date and had also undergone training imparted by the Directorate of Drugs Control Administration, Gujarat State, the said three employees are eligible for the posts of Food Inspectors and are entitled to be posted as and continued as Foods Inspectors.

2.3 The petitioners have prayed for quashing the order dated 30.4.1980 (Annexure "B") transferring Food Inspectors as Sanitary Inspectors and the petitioners have further prayed for a declaration that once a Food Inspector, Food Inspector for ever unless disqualified in the Government Gazette under the Prevention of Food Adulteration Act. The petitioners have also prayed that the respondent Corporation be directed to absorb the above named three employees as Senior Food Inspectors.

2.4 While issuing notice, the Court granted ad-interim relief directing the Corporation not to fill up three vacant posts in the cadre of Food Inspectors.

3. Special Civil Application No. 4188 of 1995 is filed by Food Inspectors' Association of Gujarat and the Gujarat Mazdoor Union challenging the communication dated 28.4.1995 (Annexure "A" to the petition) wherein the State Government in the Health and Social Welfare Department expressed its opinion to the Commissioner for Food and Drugs Control, Gujarat State giving the interpretation of Rule 8 of the Prevention of Food Adulteration Rules, 1980 as amended by the Amendment Rules of 1980.

While issuing notice on 17.5.1995, this Court granted ad-interim relief staying further implementation of the policy contained in the said communication dated

28.4.1985 in case of any Food Inspector in the State of Gujarat.

Civil Application No. 1404 of 1996 came to be filed by Dinesh Sheth praying for vacating the aforesaid ad-interim relief and contending that the applicant was fully eligible for the post of Food Inspector and the applicant was appointed as a Food Inspector on 30.5.1995, but because of the aforesaid ad-interim relief granted by this Court, the State Government has not issued the notification in the gazette and, therefore, by order dated 22.12.1996 the Vadodara Municipal Corporation has withdrawn the appointment of the applicant as Food Inspector for want of notification.

4. Special Civil Application No. 4910/95 is filed by six employees of the Vadodara Municipal Corporation challenging the orders dated 26.4.1995 (Annexure "A") passed by the Vadodara Municipal Corporation removing the petitioners from the posts of Food Inspectors without any notice or reason. It is contended that the impugned action has been taken at the instance of the Secretary of Consumer Organization out of oblique motive.

Civil Application No. 1498/95 is filed for being impleaded as a party in Special Civil Application No. 4910/95. The said applicant is the daughter of an employee who claims that he is entitled to be notified as a Food Inspector.

5. Letters Patent Appeal No. 504/96 is filed by Harish Premjibhai Parmar, whose petition for a writ of mandamus to notify the petitioner's name in the official gazette as a Food Inspector for Jamnagar area was dismissed by the learned Single Judge and, therefore, the original petitioner has filed this Letters Patent Appeal.

6. In all these proceedings certain common questions of law have been raised. Hence, with the consent of the learned counsel for the parties, all the matters have been heard together and are being disposed of by this common judgment.

7. Mr MC Bhatt with Mr RD Raval, learned counsel for the petitioners in Special Civil Application Nos. 1917/91, 4910/95 and 4188/95 as well as Mr NK Majmudar for the appellant in the Letters Patent Appeal have urged the following contentions :-

(i) All the concerned employees were and are eligible to be Food Inspectors under the Prevention of

Food Adulteration Act, 1954. All the concerned employees are holding the educational qualification of SSC and were Sanitary Inspectors at the relevant time. All the employees (except the appellant in the LPA) had also undergone the training of 45 days conducted by the Directorate of Drugs Control Administration, Gujarat State and, therefore, the said employees were eligible for appointment as Food Inspectors as per Rule 8 of the Rules prior to its amendment with effect from 1.3.1980. Since the concerned employees were appointed as Sanitary Inspectors prior to 1.3.1980 and had acquired eligibility criteria before 1.3.1980, they were entitled to be appointed and continued as Food Inspectors.

(ii) Even otherwise under the amended rules of 1980 also, even after 1.3.1980 the concerned employees were entitled to be appointed and continued as Food Inspectors. They fulfilled the eligibility criteria of educational qualification of SSC and held the post of Sanitary Inspectors. The employees (except the appellant in the Letters Patent Appeal) had undergone training for the post of Food Inspectors. They had no right or power to determine the number of days for which the training should last. They had undergone the training of 45 days' as conducted by the Directorate of Drugs Control Administration, Gujarat State. Hence, even if there was any shortfall in training, such employees could not be denied their right to be appointed/notified as Food Inspectors.

(iii) In any view of the matter, the concerned employees have been discharging duties as Food Inspectors for the last about 20 years and, therefore, on equitable grounds also, the employees are entitled to get the benefit of regularization of their service as Food Inspectors and their appointment as Food Inspectors may not now be permitted to be disturbed when almost all such employees are on the verge of their retirement. Strong reliance has been placed on a number of decisions of the Apex Court for contending that even if the initial appointment was illegal or irregular, the authorities, having notified the concerned employees as Food Inspectors under Section 9 of the Prevention of Food Adulteration Act and Rule 8 of the Rules, are estopped from terminating the

services of the concerned employees as Food Inspectors.

(iv) In the Letters Patent Appeal, the ground urged by Mr Majmudar for the appellant is that the appellant was possessing requisite educational qualification and was also appointed as Food Inspector and the appellant cannot be denied continuance on the said post merely on the ground that he had not undergone the requisite training when the respondents themselves were at fault in not sending the appellant for training.

8. On the other hand, Mr Pranav G. Desai, learned counsel for the Vadodara Municipal Corporation and Mr RC Kodekar, learned AGP appearing for the Government authorities have opposed the petitions and have submitted that all the concerned employees (except the appellant in the LPA) were employees of the Vadodara Municipal Corporation holding the substantive posts of Sanitary Inspectors and that when they are notified as Food Inspectors, it is not a substantive appointment on another post but they are merely designated as Food Inspectors so as to confer on them the powers under the Prevention of Food Adulteration Act and the Rules for taking samples and launching prosecution against the persons who violate the provisions of the Act. It is submitted that the employees discharging duties of Sanitary Inspectors as well as those discharging duties of Food Inspectors are in the same pay-scale subject to payment of certain allowances for touring, but the employees notified as Food Inspectors do not come out of the substantive cadre of Sanitary Inspectors in which they are appointed and thereafter notified as Food Inspectors.

It is further submitted that since notifying an employee as a Food Inspector does not amount to a substantive appointment on a substantive post, but it is only designating an employee for conferring certain statutory powers upon him, no employee has any right to be notified or to be continued as a Food Inspector. It is open to the Corporation to assign the duties of Food Inspectors to employees out of those who are notified as Food Inspectors in the Government Gazette. Mere notification in the Government Gazette does not entitle any such employee to be assigned duties of a Food Inspector. It is for the respondent Corporation to assign such duties to eligible persons notified as Food Inspectors according to seniority or according to valid administrative reasons.

9. We have heard the learned counsel for the parties at length. Before dealing with the rival submissions, it will be necessary to refer to the relevant provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules").

Section 2(iv) of the Act defines 'Food (Health) Authority' as under :-

"Food (Health) Authority" means the Director of Medical and Health Service or the Chief Officer in-charge of Health administration in a State, by whatever designation he is known, and includes any officer empowered by the Central Government or the State Government, by notification in the Official Gazette, to exercise the powers and perform the duties of the Food (Health) Authority under this Act with respect to such local area as may be specified in the notification.

Section 2(vii) of the Act defines 'local area' as under :-

"Local area" means any area whether urban or rural, declared by the Central Government or the State Government by notification in the Official Gazette, to be local area for the purposes of this Act.

Section 2(viii-a) of the Act defines 'Local (Health) Authority' as under :-

"Local (Health) Authority', in relation to a local area, means the officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in-charge of health administration in such area with such designation as may be specified therein.

Section 8 empowers the Central/State Government to appointment public analysts having the prescribed qualifications. Section 9 reads as under :-

"9. Food Inspectors - (1) The Central Government

or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be :

Provided that no person who had any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Inspector under this section.

(2) Every Food Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf."

Section 10 enumerates the powers of the Food Inspectors. The said powers mainly include the power to take sample of any article of food and to send such sample for analysis to the Public Analyst and also subject to certain restrictions, the Food Inspector has the power to prohibit the sale of any article of food in the interest of public health. The Food Inspector is also vested with the power to enter and inspect any place where any article of food is made, stored or exposed, exhibited for sale and to take samples of such articles of food or adulterant for analysis.

Sub-section (5) of Section 10 also confers power upon the Food Inspector to break open the door of any premises where any article of food may be kept for sale and the Food Inspector is also conferred with the power to launch prosecution under the Act.

Sub-section (8) of Section 10 provides that any Food Inspector may exercise the powers under Section 42 of the Code of Criminal Procedure.

Section 11 lays down the procedure to be followed by Food Inspectors. Section 20 contains provisions for prosecution for an offence under the Act.

Rule 8 of the Prevention of Food Adulteration Rules, 1955, prior to its amendment with effect from



1.3.1980, read as under :-

"8. Qualifications of Food Inspector - A person shall not be qualified for appointment as food inspector, unless he -

(i) is a medical officer in charge of the health administration of a local area, or

(ii) is a graduate or a licentiate in medicine, and has received at least one month's training in food inspection and sampling work approved for the purpose by the Central or the State Government, or

(iii) is a qualified Sanitary Inspector having an experience as such for a minimum period of one year and has received at least forty five days training in food inspection and sampling work under the Food (Health) Authority approved for the purpose by the Central Government, or

(iv) is a graduate in Science with Chemistry as one of the subjects, or a graduate in Pharmacy or a graduate in Agriculture, Food Technology or Dairy Technology, and has received at least forty five days training in food inspection and sampling under the Food (Health) Authority approved for the purpose by the Central Government, or

(v) the period of training referred to in clauses (iii) and (iv) shall be extended to three months whenever considered necessary by the concerned Food (Health) Authority :

Provided that a person who is a food inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, may continue to hold office as such subject to the terms and conditions of service applicable to him, even though he does not fulfil the qualifications laid down in clauses (i) to (iv)"

(emphasis supplied on behalf of the petitioners)

Pursuant to the amendment made by the Amendment Rules, 1980, the Rule now reads as under with effect from 1.3.1980.

"8. Qualifications for Food Inspector - A person shall not be qualified for appointment as Food Inspector unless he -

(a) is a medical officer in charge of Health administration of a local area; or

(b) is a graduate in medicine and received at least one month's training in food inspection and sampling work approved for the purpose by the Central Government or a State Government; or

(c) is a graduate in Science with Chemistry as one of the subjects or is a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or is a diploma-holder in Food Technology or Dairy Technology from a university or institution established in India by law or has equivalent qualifications recognized and notified by the Central Government for the purpose and has received three months' satisfactory training in food inspection and sampling work under a Food (Health) Authority or in an institution approved for the purpose by Central Government :

Provided ... ..

Provided further that a person who is a qualified Sanitary Inspector having experience as such for a minimum period of one year and has received at least three months' training in whole or in parts in food inspection, and sampling work, may be eligible for appointment as Food Inspector, up to the period ending on the 31st March, 1985, and may continue as such if so appointed even though he does not fulfil the qualifications laid down in Cls. (a) to (c):

Provided also that nothing in this rule shall be construed to disqualify any person who is a food inspector on the commencement of the

Prevention of Food Adulteration (Amendment) Rules, 1980, from continuing as such after such commencement.

(emphasis supplied on behalf of the petitioners)

10. The first major contention of Mr Bhatt for the petitioners is that the employees who were Sanitary Inspectors and were selected for training and had undergone training before 1.3.1980 were eligible for appointment as Food Inspector and were, therefore, entitled to be appointed as Food Inspectors and that merely because there was some delay on the part of the authorities in notifying them as Food Inspectors, that would not make them ineligible to be appointed as Food Inspectors after 1.3.1980. The second major contention of Mr Bhatt is that even if they were not considered as Food Inspectors appointed prior to 1.3.1980, since they satisfy all the other eligibility criteria and the so called deficiency in their eligibility is only on account of the fact that they had undergone only 45 days training and not three months' training, that was a mere irregularity for which the employees were not responsible. Considering the fact that the employees have been discharging duties as Food Inspectors for the last almost 20 years, their appointments are not required to be disturbed at this stage when they are on the verge of retirement and when their experience over the last two decades would more than compensate for the alleged deficiency in the training.

11. It appears that the entire basis of the aforesaid petitions is that the post in question is a substantive post of Food Inspector to which a person holding the post of Sanitary Inspector is subsequently appointed/promoted on account of the training imparted to the holder of the post of Sanitary Inspector.

The said premise appears to be untenable. There is considerable substance in the submission of Mr Pranav G Desai for the Vadodara Municipal Corporation and Mr Kodekar, learned AGP that all that is done by the Government notifying a person as a Food Inspector is to confer a designation on an existing employee of a local authority such as Vadodara Municipal Corporation for the purpose of conferring on such employee statutory powers of a Food Inspector under the Prevention of Food Adulteration Act. Although the notification under Section 9 of the Act read with Rule 8 of the Rules is

issued by the State Government, that is done on the basis of the recommendations of the concerned local authority which forwards the names of persons for designation as Food Inspectors by such notification. The only purpose of such notification is to declare to the public at large or the concerned persons within the local area from whom the Food Inspector is to collect samples and to the administration, investigating agencies and to the Courts that the concerned employees have been vested with the necessary powers under the Act and the Rules for taking samples and for launching prosecution. This being the real purpose of notifying Food Inspectors under the Act, it cannot be said that the Sanitary Inspectors who are admittedly employees of the concerned local authority like a Municipal Corporation are given any substantive appointment by the State Government to any substantive post. This conclusion is also fortified by the fact that the Sanitary Inspectors and the Food Inspectors are in the same pay-scale. The Food Inspectors may be given some allowance on account of the nature of their duties, but there is nothing to show that the Sanitary Inspectors notified as Food Inspectors go out of the cadre of Sanitary Inspectors. In this view of the matter, the situation assumes an entirely different complexion and the grievances raised in the petitions are not to be examined in the context in which grievances against termination of employees from service is required to be examined. If the concerned employees are denotified as Food Inspectors on the ground of their ineligibility or otherwise, they will not be losing their employment, but they will continue to be employees of the Municipal Corporation or the concerned local authority in the same pay-scale. They will only be losing the statutory powers under the Prevention of Food Adulteration Act and the Rules framed thereunder.

12. Now coming to the question of eligibility criteria, it appears that prior to 1.3.1980, a qualified Sanitary Inspector (i.e. with SSC qualification) with one year experience having received 45 days training in food inspection and sampling work was eligible for being notified as a Food Inspector. With effect from 1.3.1980, a Sanitary Inspector is not eligible for being notified as a Food Inspector unless he possesses (i) qualification of SSC, (ii) has experience as Sanitary Inspector for one year and (iii) has received at least 3 months' training in whole or in parts in Food Inspector and sampling work, (iv) he is appointed as Food Inspector by 31.3.1985.

13. As far as the third proviso to amended Rule 8 is concerned, it is a saving clause for persons who were

already notified as Food Inspectors on or before 1.3.1980. There is a specific provision that such a person is not to be treated as disqualified from continuing as a Food Inspector after 1.3.1980.

None of the employees whose case is being examined in this group of petitions falls in this category.

14. The persons whose case is being examined were all appointed as Sanitary Inspectors by the concerned local authority, but they were not appointed or notified as Food Inspectors till 1.3.1980. Of course, there is one category of Sanitary Inspectors who had undergone 45 days' training in the year 1979 i.e. prior to 1.3.1980 and the contention urged on their behalf is that even the unamended rules in force prior to 1.3.1980 provided for 45 days' training; the employees cannot be put to a disadvantage by a subsequent amendment in the Rules providing for 90 days' training.

However, if there was a qualified Sanitary Inspector with a minimum experience of one year who had either received only 45 days' training earlier or who had not been sent for training but had not made any grievance that he will be prejudiced on account of amendment for 90 days' training, he ought to have approached the concerned authority for training/further training so as to make it three months' training before 31.3.1985 and if there was no response, he could have instituted appropriate legal proceedings. None of the persons whose case is being espoused in this group of petitions has brought to our notice any such representation made to the authority or that when there was no response to such a representation, any such person had instituted any legal proceedings within reasonable time.

15. In this view of the matter, we are not inclined to entertain this group of petitions for examining the contention that they were not responsible for not sending them for 90 days training between 1.3.1980 and 31.3.1985. It is true that some of the employees such as three employees covered by Special Civil Application No. 1917/91 were appointed as Food Inspectors in the year 1981-82 by a notification in the official gazette. This may have been done because the local authorities did not have eligible persons who could be notified as Food Inspectors when the Government amended the Rule, but when notification of a person as a Food Inspector in the official gazette does not confer upon him any substantive right to hold a post as such, it cannot be said that not

continuing a person as Food Inspector or denotifying his name as Food Inspector by issuing a notification to that effect in the official gazette would amount to terminating his services or removing him from the post of Food Inspector. All that would happen upon issuance of notification under Section 9 of the Act denotifying any employee from the designation of Food Inspectors would be that the employees holding the posts of Sanitary Inspector would cease to have the powers of Food Inspectors under the Prevention of Food adulteration Act, but they will continue to remain in the substantive cadre of Sanitary Inspectors and in the same pay-scale.

16. In view of the above discussion, the Special Civil Applications are dismissed and the Letters Patent Appeal is also dismissed.

Rule is discharged with no order as to costs.  
The interim relief granted earlier stands vacated.

We make it clear that in these petitions and appeal we have merely examined the right of the petitioners/appellant to be continued as Food Inspectors. But the persons who have exercised the powers of Food Inspectors after notification of their names in Government notifications under section 9 of the Prevention of Food Adulteration Act and/or under the interim orders of this Court shall not invalidate any action taken by them under the Prevention of Food Adulteration Act, 1954 and Prevention of Food Adulteration Rules, 1955.

17. Since the main matters are disposed of, Civil Applications do not survive and are accordingly disposed of.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)  
sundar/-

After the judgment is pronounced, Mr Raval, learned counsel for the petitioners prays that the interim relief granted earlier may be continued for some time to enable the petitioners to have further recourse.

In the facts and circumstances of the case, we continue the interim relief granted earlier till 10.2.2001 only.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)